

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
G. S. DONALDSON INVESTMENT-CO.)

Appearances:

For Appellant: G. S. Donaldson, President of the corpo-
ration and Howard Jones, Auditor
For Respondent: Chas. J. McColgan, Franchise Tax Commis-
sioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929) from an action of the Franchise Tax Commissioner in overruling the protest of G. S. Donaldson Investment Co. against the proposed assessment of an additional tax of \$102.33 based upon its return for the year ended December 31, 1929.

The additional tax results from the disallowance by the Commissioner of a deduction claimed for a loss from bad debts in the amount of \$5,939.22 in arriving at the taxable net income and in the disallowance of a portion of the offset claimed for real estate taxes paid. The adjustment on account of the tax offset was a minor one representing only 9¢ and is conceded by the taxpayer to have been correctly made. Consequently, it may be eliminated from consideration. It appears from the evidence, submitted on appeal, that two items constitute the losses for which deductions were claimed by the Appellant.

One of these items was an account in the amount of \$2,831.78 due from Charles A. Kitley and the other was an account for \$3,107.44 due from H. H. Rogers. According to the evidence, while Charles A. Kitley filed a petition in bankruptcy in January, 1928, and was discharged thereunder in May, 1928, his account with the Appellant was not incorporated in the schedule of indebtedness attached to the petition in bankruptcy he continued in business after being discharged and promised to liquidate the liability. However, this was not done and the liability outlawed during the year 1929.

So far as the H. H. Rogers account is concerned, it appears that the debtor was committed to San Quentin penitentiary in April, 1926, and that the account became worthless in that year. In fact, the taxpayer now concedes that the amount thereof was not a proper deduction from gross income for the year 1929. Therefore, we shall eliminate this loss from further consideration in the appeal.

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The law respecting the deduction of bad debts in arriving at the net income taxable under the act is to be found in subdivision (e) of Section 8 and provides for the allowance of

"debts ascertained to be worthless and charged off within the taxable year, or, in the discretion of the commissioner, a reasonable addition to a reserve for bad debts * * * * In case of a debt existing on the date fixed by Section 19 hereof (January 1, 1928) for the ascertainment of a gain or loss on the part of the taxpayer no more than its fair market value on that date shall be deducted."

In view of the omission of the Kitley debt from the schedule in the bankruptcy petition and of the debtor's promise to liquidate the liability which did not outlaw until 1929, we conclude that the Appellant was justified in carrying the item on its books until that year. What its actual worth was as of January 1, 1928 may be debatable, but since the adjudication in bankruptcy did not occur until after that date, it is reasonable to conclude that it was of substantial value then. The Franchise Tax Commissioner has suggested that under the circumstances the item was a proper deduction from gross income in arriving at the net taxable income and we are in accord with this conclusion. We are advised that the Appellant has conceded its liability for the remainder of the proposed additional assessment, paying the amount thereof.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in overruling the protest of G. S. Donaldson Investment Co., a corporation, against a proposed additional assessment of \$102.33 based upon the return of said corporation for the year ended December 31, 1929, under Chapter 13, Statutes of 1929, be and the same is hereby modified to the end that said corporation be allowed to deduct the amount of \$2,831.78, representing an account due by Charles A. Kitley as a bad debt under subdivision (e) of Section 8 of said Act in the computation of its taxable net income on the basis of said report. Chas. J. McColgan, Franchise Tax Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 15th day of December, 1931, by the State Board of Equalization.

Jno. C. Corbett, Chairman
R. E. Collins, Member
H. G. Cattell, Member
Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary